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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,382	01/22/2002	Richard David Robinson JR.	40934.010600	6959

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MCLEAN, VA 22102

EXAMINER

PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 03/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,382

Applicant(s)

ROBINSON ET AL.

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 9-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 22 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group-I, claims 1-8 in Paper No. 8 is acknowledged.

Specification

2. Applicant is reminded of the proper language and format for an **abstract** of the disclosure.

The form and legal phraseology often used in patent claims, such as "**means**" and "said," should be avoided.

The instance of "means" found in the second-to-last sentence of the Abstract should be substituted with a more definitive term or phrase.

3. The disclosure is objected to because of the following informalities:
On page-5 of the Specification, in the second-to-last sentence of paragraph [0012];
"is fill" should be changed to --is filled--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

4. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by
Hayes et al. (US 6,306,913) 2001.

Regarding claim-1:

Hayes '913 discloses a pesticide delivery system for forming a bait station, comprising:

- A packaged delivery container, such as a pre-filled projectile,
[(e.g., a so-called "paint ball"; column-2, lines 7-8),(encased in a suitable polymer;
column-2, lines 23-26; read as "a flexible material"),(see also Hayes claims 1-2)];
- Additionally, the container for delivering the pesticides may optionally be used together with bait or other materials that either serve to attract or repel the intended target of the pesticide (column-3, lines 1-4);
- Application by projectile, whereby a paint ball containing the specific amount of pesticide would be applied to the site by loading it in a paint ball gun, aiming it at a target and shooting,(column-7, lines 30-35; also see Hayes claim-5).

Regarding claims 2 and 3:

The discussion above regarding claim-1 is relied upon.

Hayes cites in claim-4 a gelatin pesticide container,
(read as; biodegradable).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable
over Hayes et al. (US 6,306,913) 2001, in view of
Pearce et al. (US Publication 2001/0054367 A1) 2001.

Regarding claim-4:

The discussion above regarding claim-1 is relied upon.

Hayes does not specifically disclose the spherical vessel (paint ball) as having a diameter greater than 0.68 inch as cited in the instant claim.

Hayes does disclose that any container that emits the contents upon contact should be considered a projectile for purposes of his application (column-2, lines 5-16).

Art Unit: 3644

Pearce teaches a pesticide delivery system including a projectile and a gas-propelled, projectile launching device (Abstract).

Pearce further teaches that if desired for safety or other reasons, the caliber of projectile and barrel of the projectile launching device can be selected so as to avoid interchangeability with conventional paint balls (paragraph [0039]).

It would have been obvious to *phosita* at the time the invention was made, to have dimensioned the spherical vessel of Hayes as cited in the instant claim, as taught by Pearce; so as to avoid interchangeability with conventional spherical vessels.

Regarding claim-5:

The discussion above regarding claim-4 is relied upon.

The spherical vessel of Hayes as modified, is capable of the dimension as cited in the instant claim; as further such modification is merely an alternate equivalent spherical vessel dimensioned to avoid interchangeability with conventional spherical projectiles.

Regarding claim-6:

The combination of Hayes as discussed above regarding claims 1 and 3 and the teaching of Pearce as discussed above regarding claim-4, renders the invention of the instant claim obvious.

Regarding claims 7 and 8:

Hayes discloses a paint ball containing the specific amount of pesticide would be applied to the site by loading it in a paint ball gun, aiming it at a target and shooting, (column-7, lines 30-35; also see Hayes claim-5).

Hayes further discloses under the paragraph "Application by Projectile", that the paint balls are typically fired from air (CO₂) powered guns, and that commercially available paint ball gun devices and paint balls are well known, and have become an industry in the United States (column-7, lines 21-36).

Pearce teaches that if desired for safety or other reasons, the caliber of projectile and barrel of the projectile launching device can be selected so as to avoid interchangeability with conventional paint balls (paragraph [0039]).

The obviousness of the larger caliber has been discussed above in "Regarding claim-4".

The limitations of the pneumatic delivery device as cited in the instant claim are considered inherent to the paint ball guns of Hayes and Pearce while Pearce and the instant invention have in common the motivation to increase the caliber of the paint ball and the device to deliver the pesticide.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3644

Ingram et al. (Patent Application Publication No. US 2002/0061325 A1) 2002; teaches a projectile which can be a paint ball, capsule or the like can be used to administer pesticides.

Pinney 6,242,489, 6,352,032 and 6,386,113 teaches malodorant compositions and other compositions delivered via non-lethal weapons such as grenades and modified air guns in paint balls and modified shotgun shells.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on T-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 703-306-4159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4180.

Charles T. Jordan
CHARLES T. JORDAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Francis T. Palo
Francis T. Palo
Examiner
Art Unit 3644

fp
February 26, 2003